IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

CRL.A.No. 583 of 2000

CC.5/1999 of THE SPECIAL JUDGE (SPE/CBI)-I, ERNAKULAM

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APPELLANT/ACCUSED:

SADASIVAN NAIR
SECTION LINEMAN, TELECOM SUB DIVISION,
POOJAPURA, TRIVANDRUM
RESIDING IN KOLLAMVILAKATH VEEDU,
EDAKKODE, NEMOM-P.O.
TRIVANDRUM (UNDER SUSPENSION)

BY ADV. SRI.V.N.ACHUTHA KURUP (SR.)
SRI.B.S.SWATHY KUMAR

RESPONDENT/COMPLAINANT:

SUPERINTENDENT OF POLICE
CBI/SPE/COCHIN

BY SRI.S.SREEKUMAR, SC FOR CBI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K.BASHEER, J.

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Crl.A.No.583 OF 2000

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Dated this the 30th day of November 2007

JUDGMENT

Accused in C.C.No.5/1999 on the file of the Court of the Special Judge (SPE/CBI)-I, Ernakulam is the appellant. He was tried for offences punishable under Sections 7 and 13(1)(d) read with section 13(2) of the Prevention of Corruption Act, 1988, (hereinafter referred to as 'the Act'). The trial court found the appellant guilty under Section 13(1)(d) read with Section 13(2) of the Act and he was convicted thereunder and sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.2,000/- and in default to undergo rigorous imprisonment for a further period of two months. The trial court also found the appellant guilty under Section 7 of the Act and he was convicted and sentenced to undergo rigorous imprisonment for six months thereunder. It was directed that substantive sentences should run concurrently. Hence, this appeal.

2. The Inspector of Police, C.B.I./S.P.E., Cochin registered a case R.C.3(A)/99 KER dated 12-3-99 against the appellant on the

basis of Ext.P2 complaint received from PW1 on March 11, 1999. In the said complaint, PW1, who was working as Telephone Operator in the Army Telephone Exchange at Pangod in Thiruvananthapuram, had stated that the appellant/accused had demanded bribe of Rs.250/- from him on March 11, 1999 at 4.45 P.M. for shifting his telephone to his new residential premises i.e., from Odankuzhi to Mangattukadavu, Thiruvananthapuram. Since PW1 was not prepared to pay the bribe as demanded by the appellant, he had lodged Ext.P2 complaint before the Deputy Superintendent of Police, Central Bureau of Investigation, Poojappura, Thiruvananthapuram on March 11, 1999 requesting for appropriate action against the appellant who was working as Line man in the Telephone Sub Division Office, Poojappura.

3. The prosecution case was that pursuant to the receipt of Ext.P2 complaint a trap was laid through PW7 and the appellant was caught red handed in the presence of trap witnesses. Thereafter, the investigation was completed and charge sheet was laid.

4. The prosecution examined PWs1 to 8 and Exts.P1 to P14 and MO1 to MO4 series were marked. No oral or documentary evidence was adduced on the side of the defence.

5. The trial court, after considering the oral and documentary evidence, found that the prosecution had succeeded in establishing the charge levelled against the appellant. Accordingly, the appellant was convicted and sentenced as indicated above.

6. Sri. V.N.Achuthakurup, learned senior counsel appearing on behalf of the appellant submits that the order of conviction and sentence passed by the trial court cannot be sustained either in law or on facts. According to the learned counsel, the prosecution had not adduced any evidence to show that the appellant had demanded bribe from PW1. In the absence of any corroborative evidence to show that the alleged recovery of cash from the accused was pursuant to a demand made by him, the accused was not liable to be found guilty. Learned senior counsel further submits that the recovery of cash from the accused in the absence of proof of demand for bribe is of no avail to the prosecution to

hold him guilty.

7. As mentioned earlier, the prosecution case originated from Ext.P2 complaint filed by PW1 before the Deputy Superintendent of Police, C.B.I. PW1 had stated in his complaint that the accused who is a public servant working as Line man in the Telephone Department, had demanded bribe of Rs.250/- in order to shift the telephone to his new residence. PW1 had categorically stated in Ext.P2 that the demand was made by the accused at his office at about 4.45 P.M. on March 11, 1999. The accused had told PW1 that he would go to his residence on the next day and give him the telephone connection, if he paid the amount of Rs.250/-. Ext.P2 complaint was in the handwriting of PW1 himself and it was signed by him. Though learned senior counsel has raised a contention that there was no evidence on record to show that on what date Ext.P2 complaint was preferred, a perusal of Ext.P2 unambiguously shows that it was lodged on March 11, 1999 itself. PW1 had put the date under his signature on the left hand side of the complaint. Therefore, the petitioner cannot be heard to say that there was no demand by him for bribe

from PW1.

8. It is pertinent to note that officer who received the complaint had instructed his subordinate officer (PW7) to lay a trap when the accused visited the residence of PW1 for effecting connection of the telephone. It had also come out from the evidence of the witnesses that the trap was laid after making elaborate preparation. PW2 who was working as Assistant Manager (Vigilance) in the Food Corporation of India was directed to accompany PW1 to his residence at the time when the accused went there. PW2 had deposed before the court that he had seen the accused stretching his left hand after completing the work (connecting the telephone line) and PW1 putting the cash in the hand of the accused. Of course, PW2 had stated that he did not hear the exact words spoken between accused and PW1. He had categorically stated that he had seen PW1 putting the phenolphthalein smeared currency notes in the left hand of the accused. PW7, the Inspector of Police attached to the CBI, had deposed that he was instructed by his senior officer to lay the trap against the accused consequent on the receipt of Ext.P2

complaint.

9. PW7 had also given the details of steps taken by him in preparing the trap. He further stated that Ext.P2 complaint was read out to the persons who were drafted the trap party. PW1 had reiterated before PW7 that he had preferred the complaint against the accused. PW7 further stated that two hundred rupee notes and one 50 rupee note were smeared with phenolphthalein in the presence of the trap party at his office in the morning before proceeding to the residence of PW1. It is not necessary to refer to the other details given by PW7 in this regard for the purpose of this case. Suffice it to say that PW7 had categorically deposed before trial court that as soon as PW1 had given the signal that phenolphthalein smeared notes were received by the accused, he had come out of the Pooja room in the residence of PW1 where he had been waiting. At that time, the accused had reached the gate of the residential compound. PW7 rushed to the gate and asked the accused to come back to the house. After disclosing his identity, PW7 enquired whether he had taken bribe from PW1. Initially the accused pleaded innocence. But later he

admitted that he had accepted Rs.250/- from PW1. The currency notes received by him were seen in his left hand. The evidence given by PW1 was corroborated by the evidence of PW2.

10. The testimony of PW7 unambiguously showed that the trap laid by him had worked out to perfection. Thus, the prosecution had clearly established that the accused had demanded bribe from PW1 and that a trap was laid which culminated in the accused being caught red handed at the time when he accepted the bribe from PW1.

11. As regards the contention raised by learned senior counsel that the prosecution had failed to prove that the accused had made a demand for bribe, it has to be noticed at once that the said contention is wholly misconceived and untenable. A perusal of Ext.P2 complaint unambiguously shows that PW1 had categorically stated that the accused, on the previous day of the incident, had demanded a sum of Rs.250/- from him in order to give telephone connection quickly. In that view of the matter, there is no merit in the contention raised by the petitioner that the prosecution had not adduced any evidence to show that there

was a demand for bribe by him.

12. Learned senior counsel has placed reliance on a few decisions in support of his contention that in the absence of proof for demand of bribe the prosecution is liable to fail. My attention is invited to the decisions of their lordships of the Supreme Court in **Panalal Damodar Rathi V. State of Maharashtra [AIR 1979 SC 1191].** A perusal of the above judgment shows that the accused in that case were given the benefit of doubt since the court took the view that it would be hazardous to base a conviction on the materials which were available on record. It was noticed that the testimony of the complainant regarding demand for money by the appellant was not corroborated. The other decision which has been cited before me is rendered by a learned Single Judge of the Bombay High Court in **Yashwant Nanubhai Pingle v. State of Maharashtra [1999 Criminal Law Journal 1270]**. Yet again the High Court had given the benefit of doubt to the accused in that case, since it was noticed that the testimony of the complainant and other witnesses regarding demand for bribe by the accused was found to be

untrustworthy. The court took the view that mere recovery of powdered currency notes by the accused cannot be considered as a circumstance pointing to the guilt of the accused.

13. I am afraid that the above two decisions cited before me by the learned senior counsel will have any bearing on the case on hand.

14. Sri.S.Sreekumar, learned Standing Counsel for the C.B.I. while adverting to the oral testimony of PW1, 2 and 7 has contended that the prosecution had established the guilt of the accused beyond any reasonable doubt. He points out that the trap laid by PW7 had worked so well that the accused was caught red handed with the Phenolphthalein smeared notes in his hand within seconds of his accepting it from PW1. PW1 who himself was a public servant had lodged Ext.P2 complaint in his own handwriting. PW2 who was an Assistant Manager (Vigilance) in the Food Corporation of India was present at the time when PW1 had handed over the Phenolphthalein smeared currency notes to the accused. In response to the contention raised by learned senior counsel that there was no proof for demand of bribe,

learned Standing Counsel submits that the evidence of PW1 coupled with Ext.P2 would unambiguously show that the accused had in fact made a demand for bribe.

15. In this context, learned Standing Counsel has invited my attention to the following decisions of the Supreme Court **M.Narsinga Rao v. State of Andhra Pradesh [2001 (1) SCC 691]; Madhukar Bhaskarrao Joshi V. State of Maharashtra [AIR 2001 SC 147]; State of A.P. V. Vasudeva Rao [JT 2003 (9) SC 119] and Girija Prasad (Dead LRs) V. State of Madhya Pradesh [2007 (7) SCC 625].**

16. In the above decisions, it has been laid down that once it is proved that amount had been received by the accused, presumption under Section 4 of the Act (Section 20 of Act 1988) would get attracted. In **Girija** (supra), the Supreme Court had referred to the various earlier decisions on the point. In **Narsinga Rao** (supra), it was laid down that once the prosecution had established that the accused had received gratification, it was possible to draw a legal presumption that the said gratification was accepted as a reward for doing public duty. In **Vasudev**

(supra) the Supreme Court after referring to a catena of decisions held that when it was established by the prosecution that the accused had received money from the complainant, the presumption under Section 20 would be available in the absence of convincing credible and acceptable explanation from the accused as to how he happened to receive it.

I have carefully perused the entire materials available on record. The testimony of PWs1, 2 and 7 coupled with Ext.P2 complaint and P3 entrustment mahazar will undoubtedly show that the prosecution had succeeded in proving the case against the appellant. There is no merit in any of the contentions raised by him in this appeal. In my view, no interference is warranted in the matter of sentence also though such a plea was made by the learned senior counsel. The appeal fails and it is accordingly dismissed.

(A.K.BASHEER, JUDGE)

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